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April 14, 1999

EX PARTE OR LATE FILED

EX PARTE PRESENTATION

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

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APR 14 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Telecommunications Carriers' Use of Customer Proprietary Network Information; Use of Subscriber List Information, CC Docket No. 96-115*

Dear Madam Secretary:

SBC Communications Inc. ("SBC"), on behalf of its local telephone company subsidiaries, Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, submits the following statement in connection with the above-referenced docket.

Some parties have urged the Commission to adopt specific price regulations for subscriber list information.¹ SBC believes that such an approach would be clearly contrary to Congress' purpose in adopting Section 222(e) of the Act, and would interfere with the proper functioning of competitive markets.² Moreover, because subscriber listings are available from many sources, SBC agrees that price regulation will only reduce competitive choices and limit potential SLI products and options.³

In addition, a few parties have suggested that incumbent LECs should be required to act as SLI "clearinghouses." Again, this would be directly contrary to the language of Section 222(e), and it would be poor public policy, as Ameritech already has explained in this docket.⁴

¹ See, e.g., Ex Parte Notice Letter from Sophie J. Keefer (Willkie Farr & Gallagher) (March 9, 1999).

² See Southwestern Bell Telephone Company's Initial Brief, *YP-USA, Ltd. v. Southwestern Bell Telephone Company*, File E-99-07 (filed April 6, 1999). A copy of this brief accompanies these comments in Attachment A.

³ Accord Ex Parte Letter from Michael S. Pabian (Ameritech), at 2 (March 17, 1999).

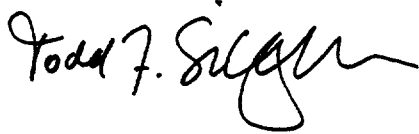
⁴ *Id* at 4-5.

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Ms. Magalie Roman Salas
Page 2

In accordance with Commission's rules governing ex parte communications, an original and two copies of this correspondence are submitted herewith. Please contact me at (202) 326-8888 should you have any questions.

Respectfully submitted,

A handwritten signature in black ink, reading "Todd F. Silbergeld". The signature is fluid and cursive, with a long horizontal stroke at the end.

Todd F. Silbergeld
Director-Federal Regulatory

cc: Ms. Ann Stevens
Mr. William Kehoe III

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 06 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. E-99-07

In the Matter of

YP-USA, LTD., d/b/a
The SunShine Pages,

Complainant,

VS.

SOUTHWESTERN BELL TELEPHONE
COMPANY,

Defendant.

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**SOUTHWESTERN BELL TELEPHONE COMPANY'S
INITIAL BRIEF**

Robert M. Lynch
Roger K. Toppins
Michael J. Zpevak
William A. Brown

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ATTORNEYS FOR
SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE11

EXHIBITS

- Exhibit A: Letter from Sophie J. Keefer to William A. Brown, dated March 29, 1999.
- Exhibit B: Table Comparing Rates Charged by Various Carriers for SLI-related Services
- Exhibit C: Proposed Indemnity Provision

SUMMARY

Complainant, YP-USA, Ltd. d/b/a The SunShine Pages ("SunShine"), alleges that Southwestern Bell Telephone Company's ("Southwestern Bell") per-listing rate for subscriber list information ("SLI") and its proposed indemnity provision are unreasonable. SunShine also contends that Southwestern Bell should further subdivide or "unbundle" its provisioning of SLI to a "new connects only" level. Southwestern Bell asserts that its rates, terms, and conditions for providing SLI are reasonable and lawful. It further asserts that the 1996 Act does not obligate it to change its data processing system to meet the needs of each and every independent publisher and that its provisioning of SLI is lawfully unbundled.

Whereas SunShine alleges that the 1996 Act requires Southwestern Bell to provide SLI at cost-based rates, Southwestern Bell asserts that the 1996 Act allows it to recover the pro rata cost of obtaining and maintaining its SLI database, the cost providing SLI to publishers, and the value of the listings. Nothing in either the text of the statute — § 222 — nor its legislative history support SunShine's contention that the rate for SLI must be cost-based. Indeed, the opposite is true. In other parts of the 1996 Act, Congress makes clear its intention to require cost-based pricing. Had Congress intended that result for § 222, it could have simply said so. It did not. Given the circumstances in which these rates are applied, Southwestern Bell's per-listing SLI rate is reasonable and lawful.

In response to SunShine's concerns over Southwestern Bell's present indemnity provision in its standard License Agreements, Southwestern Bell proposed new language. In view of the circumstances surrounding the obtaining, maintaining, and provisioning of SLI and in view of the compulsory nature of Southwestern Bell's relationship with the independent publishers, Southwestern Bell's proposed indemnity language is reasonable and, therefore, lawful.

Southwestern Bell believes it has adequately addressed any concerns SunShine might have about the frequency of providing updates. Southwestern Bell cannot presently provide updates on a weekly basis — as requested by SunShine in a letter from its counsel to Southwestern Bell's counsel. Nevertheless, Southwestern Bell has almost finalized work on its

new system for providing SLI and under that system Southwestern Bell will be able to provide updates on a weekly basis.

SunShine has also requested that the updates be provided for "new connects" only. Neither Southwestern Bell's present system nor its new system will permit that level of provisioning. The 1996 Act does not require telecommunications carriers to retool their data processing systems to meet the particular needs of each and every publisher. Nevertheless, Southwestern Bell will agree to provide SunShine with the level of updates requested, if SunShine agrees to pay all costs associated with reprogramming Southwestern Bell's data processing system. Southwestern Bell's initial estimate of this reprogramming is approximately \$27,500.

SunShine does not seek compliance with the 1996 Act. Rather, SunShine seeks to have Southwestern Bell cater to its every whim. The creation of Southwestern Bell's SLI data base and the creation of white-pages directories are adjuncts to providing telecommunications services to Southwestern Bell's subscribers. To require telecommunications carriers, like Southwestern Bell, to meet the caprice of each and every publisher is not reasonable and not required by the 1996 Act. Southwestern Bell asserts that its rates, terms, and conditions for licensing SLI are reasonable and lawful. Furthermore, Southwestern Bell provides this SLI on an unbundled, nondiscriminatory, and timely basis.

2 Southwestern Bell does not agree that SunShine pled this issue or that it is properly before the Commission for decision. Southwestern Bell merely discusses this issue in this brief in an abundance of caution because it has been raised as an "issue" in the Keefer Letter and in SunShine's "Motion to Voluntarily Dismiss Complaint in Part Without Prejudice."

ARGUMENT AND CITATION OF AUTHORITIES

A. Per-listing Price

- 1. The statute allows telecommunications carriers to charge reasonable rates for provisioning SLI. The statute does not limit reasonable rates to "cost-based" rates. Carriers are permitted to charge market rates.**

The statute is the starting point to any analysis of SunShine's challenge to the lawfulness of Southwestern Bell's per-listing rate for SLI. Section 222 reads in pertinent part as follows:

[A] telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.³

SLI is defined as:

The term "subscriber list information" means any information —

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.⁴

The issue to be decided is what did Congress intend when it required that the rates be reasonable. SunShine argues that reasonable means "cost based" plus a "reasonable profit."⁵ This position is not supported by an analysis of the statute or the legislative history.

a. Statutory analysis

The statute plainly states that the rates shall be reasonable. There is nothing within the four corners of the Telecommunications Act of 1996⁶ ("1996 Act") that supports SunShine's contention that the term "reasonable rates" equates to cost-based pricing. Indeed, if Congress had intended that result it could have easily said so. It did not.

³ 47 U.S.C. § 222(e).

⁴ 47 U.S.C. § 222(f)(3).

⁵ Complainant's "Formal Complaint" ("Complaint"), Section III, A, pp. 10-18.

⁶ Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.*

In § 251(c)(4)(A) of the 1996 Act, Congress directed incumbent local exchange carriers ("ILECs") "to offer for resale at wholesale rates any telecommunication services the carrier provides at retail . . ." to other telecommunications carriers.⁷ Under SunShine's contention that Congress intended "reasonable rates" to mean cost-based rates, Congress need only have directed ILECs to offer these services at reasonable rates. Again, in § 252(d)(1)(A) and (B), Congress explains that, in determining a just and reasonable rate for purposes of § 251(c)(2) and § 251(c)(3), state commissions shall base the determinations on cost and a reasonable profit. This language would be wholly superfluous under SunShine's rationale.⁸ In sum, where Congress intended that rates be cost based, it said so expressly and clearly. Nothing within the language of § 222 or the 1996 Act supports SunShine's contention that "reasonable rates" means cost-based rates. Indeed, as will be discussed below, the legislative history of the 1996 Act does not support that contention, either.

Reasonableness is determined by reference to the circumstances in question. Under the circumstances, a reasonable rate would allow the telecommunications carrier to price the product in such a manner to compensate it for the pro rata cost of gathering and maintaining the information, the cost of providing the information to an independent publisher, and the value of the listings themselves. Local exchange carriers often refer to this as permitting the LEC to set the price at a market rate.

Among these circumstances is the fact that independent publishers — like SunShine — are not telecommunications carriers. These independent publishers are not providing telecommunications services to the public. They are selling advertising. If they include "white-pages" directories at all, it is generally to enhance the value of their "yellow-pages" advertising. Yellow-pages advertising is a profitable business of which the cost for SLI plays only a small

⁷ 47 U.S.C. § 251(c)(4)(A). In § 252(d)(3), Congress provided that, [f]or purposes of section 251(c)(4), a State Commission shall determine wholesale rates on the basis of retail rates charged . . . , excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

⁸ 47 U.S.C. § 252(d)(1)(A) and (B).

part.⁹ In short, to set the per-listing rate at the incremental cost of providing the SLI is to subsidize these independent publishers by ignoring the value aspect of the rate.

Additionally the Commission can consider the fact that SLI is available from other sources.¹⁰ Admittedly, SLI from telecommunications carriers is a quick and convenient source. Nevertheless, it is not the only source. Under the decision in *Feist Publishing v. Rural Tel. Serv. Co.*,¹¹ white-page listings are not subject to copyright protection. Consequently, publishers are free to scan published directories and republish, resell, and use the information contained in them. Ample public information — including information in white-pages and yellow-pages directories — is available to publishers to sell yellow-pages advertising. Among other sources, this information is available in public records and on the Internet. The fact that publishers deem SLI from telecommunications carriers to be accurate, as well as quick and convenient, only underscores Southwestern Bell's argument that these listings have added value. That value ought to be reflected in the price the publisher pays in getting the SLI. Under SunShine's scheme, that value would be ignored.

b. Legislative history

While the extent of legislative history on § 222 is not great, it is sufficient to support Southwestern Bell's contention that reasonable rates allows for the recovery or more than the incremental cost of providing SLI to publishers. The House Bill was H.R. 1555. The House Commerce Committee's report on H.R. 1555 reads in pertinent part as follows:

This section meets the needs of independent publishers for access to subscriber data on reasonable terms and conditions, *while at the same time ensuring that the*

⁹ In its discovery orders in this case, the Commission staff prevented Southwestern Bell from developing evidence to compare SunShine's cost for SLI with its other costs of publication and its per book or per page profit. Nevertheless, SunShine's "Blue Springs Directory" has approximately 65,500 listings. At 25 cents per listing, the cost of an "initial load" would be only \$16,375. It costs Southwestern Bell approximately \$200,000 for the paper, printing, warehousing, and delivery of a white-pages directory of the same or similar size. Southwestern Bell believes that SunShine's profits for such a book could easily exceed \$600,000.

¹⁰ Southwestern Bell concedes that information on area residents and business — such as their names, addresses, and telephone numbers — is an essential facility needed by directory publishers to produce telephone directories. See Defendant's Answer, ¶ 36. Southwestern Bell does not concede, however, that SLI from it or any other LEC is an essential facility of the publishers' business.

¹¹ 499 U.S. 340, 111 S.Ct. 1282, 113 L.Ed.2d 358 (1991).

*telephone companies that gather and maintain such data are fairly compensated for the value of the listings.*¹²

If the intent of the legislation were to allow the telephone companies to recover only their costs, this would be odd language indeed. The value of these listings includes the pro rata cost of gathering and maintaining the information, the cost of providing that information to the publishers, and the value of the listings themselves. Even SunShine agrees that the telephone carriers ought to be compensated for the cost of providing the information. By alluding to "gather[ing]" and "maintain[ing]," the House Commerce Committee's report itself emphasizes the need for reimbursing the carriers for the pro rata cost of gathering and maintaining the information. By using the term "value of the listings," the report acknowledges that this information has an enhanced market value created by the carriers efforts to keep the information accurate and timely.

The Senate Bill was S. 652. This bill was ultimately amended to conform to the House Bill. The Senate Commerce Committee report did little more than reiterate the essential provisions of the Senate's version of the then-proposed statute.¹³ Later, the Conference Committee report reflected the basic intent of the provision; that is, to guarantee independent publishers access to SLI at reasonable and nondiscriminatory rates, terms, and conditions.¹⁴

2. Southwestern Bell's present per-listing rate for SLI is reasonable.

The present rate of \$.25 per SLI listing was derived through negotiations with a significant independent directory publisher.¹⁵ Southwestern Bell did not prepare a cost study for this rate. It was confident that, at the time the rate was established and under the then-present circumstances, it would recover the incremental cost of providing the listing to independent publishers. Southwestern Bell also reviewed the prevailing charges in the market.¹⁶ It did this in

¹² H.R. Rep. No. 104-204, Part I, 104th Cong., 1st Sess. at p. 89 (1995). [Emphasis supplied.]

¹³ S. Rep. No. 104-23, 104th Cong., 1st Sess. at p. 49 (1995): "Subsection 301(c) defines the term 'subscriber list information' and requires local exchange carriers to provide subscriber list information on a timely and unbundled basis and at nondiscriminatory and reasonable rates, terms, and conditions to anyone upon request."

¹⁴ H.R. Rep. 104-458, 104th Cong., 2nd Sess. at p. 205 (1996).

¹⁵ Defendant's Answer to Complainant's Request for Answers to Interrogatories (Defendant's Responses), interrogatory no. 2, pp. 1-3.

¹⁶ See comparison of carrier rates for various services associated with providing SLI, attached as Exhibit "B".

order to make sure its per-listing rate reflected the value of the listing.¹⁷ Southwestern Bell sought to position itself approximately in the middle of these charges. Because of the range of charges for the various services related to providing SLI, it is not reasonable to simply compare one carrier's per-listing charges with another's. What is more, circumstances vary from carrier to carrier. Southwestern Bell attempted to — and believes it succeeded in — finding the appropriate market rate for its services.

The statute requires nothing other than reasonable rates. Given the effort and facilities needed to obtain, maintain, generate, and produce accurate and current SLI for independent publishers in various modes and formats, Southwestern Bell's rates are reasonable.¹⁸ What's more, the rate fairly reflects the value of the listing within the market. No doubt SunShine and other publishers would like to get SLI, as well as the other elements used to produce directories, for free. But § 222 permits telecommunications carriers to charge reasonable rates. Southwestern Bell's per-listing rate is reasonable and, therefore, lawful.

B. Indemnification Provision

Section 222 requires that carriers provide SLI under reasonable terms and conditions. Southwestern Bell's proposed indemnity provision is wholly reasonable because it seeks to protect it from any liability that might arise solely as the result of having been required to make SLI available to "any person."

In its five-state service area, Southwestern Bell maintains approximately 16 million listings. In light of the number of listings, it is easy to imagine that simple mistakes in taking and inputting the listings can be made from time to time. These simple mistakes can theoretically expose Southwestern Bell to substantial liability to its subscribers. To protect Southwestern Bell from just such liability, state commissions have approved "limitation of liability" provisions in Southwestern Bell's tariffs.¹⁹

¹⁷ These rates are charged not only to so-called independent publishers but to the yellow-page affiliates of the ILECs, like SBC Communications Inc.'s Southwestern Bell Yellow Pages, Inc.

¹⁸ For a glimpse of what is involved in producing SLI to independent publishers, see Southwestern Bell's responses to Complainant's interrogatory nos. 4, 5, and 6, *Defendant's Responses*, pp. 4-12.

¹⁹ Arkansas: General Exchange Tariff, § 28.8.2; Kansas: Kansas General Exchange Tariff, § 20.11.2; Missouri: Missouri General Exchange Tariff, § 17.8.2; Oklahoma: OAC § 165:55-7; and Texas: Texas General Exchange Tariff, §§ 12.8.1.2 and 23.8.4.

Requiring telecommunications carriers to provision SLI increases the likelihood of errors in publication, errors which can expose them to even more liability. Even if these carriers have tariff provisions that protect them from errors made in publishing their own directories, they might not be applicable to the errors published in the directories of the independent publishers. Southwestern Bell and other carriers have included indemnity provisions to limit the liability to the publishers and to reduce the chances of liability to third parties. Such contractual provisions are normal and reasonable in business relations, in general, and in the telecommunications industry, in particular.

In this proceeding, SunShine challenged Southwestern Bell's present indemnity provision. SunShine objected to having to indemnify Southwestern Bell for its own negligence. In settlement negotiations conducted after the Complaint was filed, Southwestern Bell proposed a new indemnity provision, which addresses SunShine's concerns. This proposed indemnity provision is attached as Exhibit "C" to this brief. This new provision seeks to decrease Southwestern Bell's exposure to third party claims created by the publication of the directories of independent publishers. While the publishers must still indemnify Southwestern Bell, they no longer have to indemnify it for its own negligence or willful misconduct.

In view of the compulsory nature of Southwestern Bell's relationship with the independent publishers and the ease with which small mistakes in obtaining and communicating SLI can create large jury awards, the proposed indemnity agreement is reasonable. It seeks nothing other than to protect Southwestern Bell from the negligence and breaches of contract of the publishers. Being reasonable, the provision is lawful.

C. Updates

- 1. Under its present system, Southwestern Bell can only provide updates on a daily or monthly basis. Southwestern Bell is converting to a new system, however, and will also be able to provide updates on a weekly basis. Providing SLI updates on a daily, weekly, and monthly basis is timely and reasonable.**

SunShine has requested that Southwestern Bell provide updates more frequently than daily and monthly. SunShine has suggested weekly or biweekly.²⁰ Southwestern Bell has advised SunShine that Southwestern Bell is developing a new system, which will allow it to provide updates on a weekly basis. Southwestern Bell believes that daily, weekly, and monthly updates are more than § 222 demands. In short, Southwestern Bell's provisioning of updates is both timely and reasonable.

2. Neither Southwestern Bell's present nor its new system will be capable of producing updates by "new connects" only. Section 222 does not obligate Southwestern Bell to re-engineer its data processing system to meet every possible desire of any and all independent publishers — much less at its own cost. The unbundling requirement of § 222 must be read as requiring reasonable unbundling.

When Southwestern Bell provides updated SLI, it contains five types of telephone company service order activity:

- New connects;
- Change service;
- Record service;
- Disconnection; and,
- Move to service.²¹

SunShine has inquired whether Southwestern Bell would "agree to adjust its update offerings to provide new connects only" ²² Neither Southwestern Bell's present system nor its new system allows for this request.

Section 222 requires providing SLI on an unbundled basis. Yet, nothing in § 222 requires a telecommunications carrier to re-engineer its systems to adapt to the needs of the independent publishers. This is especially true where — as here — there has not been any prior interest expressed in obtaining new-connect updates only. Indeed, the law is to the contrary.²³

²⁰ See Keefer Letter.

²¹ See Defendant's Responses, interrogatory no. 8, pp. 13-14.

²² See Keefer Letter.

²³ See, *Iowa Util. Bd. v. FCC*, 120 F. 3d 753, 813 (8th Circuit 1997), *aff'd in part and rev'd in part, remanded, on other grounds*, ___ U.S. ___, 119 S.Ct. 721, 142 L.Ed.2d 834 (1999) ("We also agree with the petitioners' view that

Southwestern Bell estimates that to reprogram its new system to generate updates with new connects only would cost approximately \$27,500 — at a minimum. Moreover, given the data processing present schedule and presuming a reprogramming start date of August 1, 1999, this process could not be complete before December 1999. Southwestern Bell would consider reprogramming its new system to meet this particular desire of SunShine if SunShine agrees to pay all costs associated with it.

CONCLUSION

The purpose of § 222 is to facilitate competition in the yellow-pages market by guaranteeing to all publishers reasonable and nondiscriminatory access to SLI. It is not the purpose of the Act to give publishers a free ride or to subsidize their advertising businesses. Southwestern Bell has shown that its present market rate of 25 cents per listing is reasonable. Not only does it allow Southwestern Bell to recover its cost in procuring, maintaining, and providing SLI, it also reimburses it for the value of the listing. Southwestern Bell has also shown that its proposed indemnity provision is reasonable. Such provisions are common in business generally and common and necessary in the telecommunications industry. Finally, Southwestern Bell has shown that its provisioning of updates is timely, unbundled, and reasonable.

Before SunShine knew the facts, it was quick to assume that Southwestern Bell was discriminating against it and in favor of an affiliate. SunShine no longer makes that claim. Indeed, since SunShine has filed its Complaint and actually engaged in conversations with Southwestern Bell, it has discovered that Southwestern Bell's practices are reasonable and nondiscriminatory. Without needing to have Southwestern Bell change its practices, SunShine has voluntarily dismissed several of its alleged claims in this case. The remaining practices — those addressed in this brief — are equally applicable to Southwestern Bell Yellow Pages, Inc.

subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network--not to a yet unbuilt superior one.")

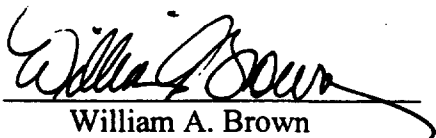
and the publishing arms of other ILECs. What's more, Southwestern Bell understands that the other ILECs' publishing affiliates apply the same or substantially similar practices to Southwestern Bell Yellow Pages, Inc. and to its out-of-region publishing affiliates.

Southwestern Bell's present and future practices are lawful, meeting the statutory requirements of § 222. SunShine does not seek compliance with the law. Rather, it seeks special treatment. SunShine wants Southwestern Bell to subsidize its advertising business and to meet its every whim. The law does not require this. To rewrite the law SunShine's way would be to have the tail wag the dog. Telecommunications carriers create their SLI data bases to provide telecommunications services and to publish white-page directories as an adjunct to that service. The law does not require telecommunications carriers to restructure their processes in order to meet the various needs of these advertising publishers. It only requires providing that data in a reasonable and nondiscriminatory way and on a timely and unbundled basis. As Southwestern Bell already does this, the Commission should deny SunShine's claims and dismiss Southwestern Bell from this case.

Respectfully submitted,

Robert M. Lynch
Roger Toppins
Michael J. Zpevak
William A. Brown

Dated: April 6, 1999

By: 
William A. Brown

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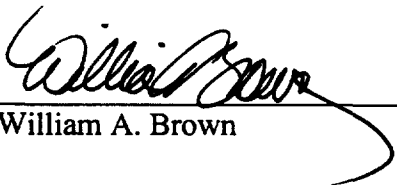
CERTIFICATE OF SERVICE

I, William A. Brown, the undersigned attorney of record, do hereby certify that I have caused copies of the foregoing "**SOUTHWESTERN BELL TELEPHONE COMPANY'S INITIAL BRIEF**" to be served in accordance with 47 C.F.R. § 1.735(f) *via* hand delivery or *via* facsimile transmission, followed by regular U.S. mail delivery, postage prepaid, this 6th day of April, 1999, to each of the following persons:

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Michael F. Finn
Sophie J. Keefer
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29 March 1999

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VIA FACSIMILE (214-464-5577)

William Brown, Esq.
Southwestern Bell Telephone Company
One Bell Plaza, 30th Floor
Dallas, Texas 75265-5521

Re: Formal Complaint, File No. E-99-07

Dear Mr. Brown:

This letter is sent on behalf of YP-USA, Ltd. d/b/a The SunShine Pages ("SunShine") to advise you that SunShine plans to withdraw tomorrow from the Commission's consideration two disputes contained in the above-referenced Complaint against Southwestern Bell Telephone Company ("SWBT"). These disputes are: (1) the availability of unlisted/unpublished listings and (2) the timeliness of provision of SLI. In addition, this letter contains a proposal regarding SWBT's update service offerings. Please advise me by 1 April 1999 whether SunShine's proposal is acceptable.

Availability of Unlisted/Unpublished Listings. SWBT will provide, upon request, the addresses of unlisted/unpublished subscribers for delivery purposes only on magnetic tapes at a rate of \$0.25 per listing. Accordingly, SunShine will voluntarily dismiss, without prejudice, the issue of the availability of unlisted/unpublished listings from its Complaint. SunShine notes, however, that the issue of the price of these listings will still be before the Commission, both in this proceeding and in CC Docket No. 96-115. Hence, the price set by the Commission for SLI will also apply to unlisted/unpublished listings.

Timeliness of Provision of SLI. SWBT requires publishers to request SLI 60 days prior to the requested compile date. Based on its experience with other carriers, SunShine believes that it is reasonable to request SLI 20 days prior to the requested compile date. However, SWBT has stated that once a publisher establishes an account with SWBT, the lead time will likely be shorter for subsequent orders from the same data center. In addition, SWBT has stated that the lead time currently in place will be shorter when SWBT implements its new "Publishing Rights Licensing Agreement." In light of these statements, SunShine is willing to withdraw this issue from its Complaint, without prejudice.

The issue of timeliness of provision of SLI is also before the Commission in CC Docket No. 96-115. By dismissing the timeliness issue from its Complaint, SunShine does not

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William Brown, Esq.

29 March 1999

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waive its right to request a shorter lead time from SWBT if the Commission mandates a shorter lead in the rulemaking.

Availability of Updates. SWBT includes the following service activity codes in subsequent updates under the SLU Agreement: (1) new connect; (2) change; (3) record; (4) disconnection; (5) move to. Updates are provided by area code or NXX/central office code. Updates are provided either daily or monthly. SWBT requires publishers to purchase all five categories of directory-affecting updates and does not permit publishers to purchase a single category, such as new connects only. Similarly, SWBT offers only daily or monthly updates, and does not permit publishers to purchase updates at other intervals, such as weekly or bi-monthly. In light of the sophistication of the databases that telephone companies use to maintain their listings, SunShine believes that SWBT is capable of providing more flexible selections to publishers at minimal additional cost.

SunShine's Complaint regarding the availability of updates could be resolved if SWBT were to agree to adjust its update offerings to provide new connects only and weekly and bi-monthly updates. SunShine looks forward to discussing that possibility with SWBT.

In order to determine -- under the current offering or a new connect only offering -- whether it is more efficient to purchase an "initial load and updates" or an "initial load" only, SunShine must know the number of updates that typically occur over a monthly period in the NXX's contained in its Kansas City book. Such an estimate is necessary for SunShine to evaluate SWBT's update offerings. SunShine would be willing to pay a reasonable, cost-based fee for such an estimate.

Indemnification. Finally, SunShine urges SWBT to respond to its proposal of 27 January 1999, regarding SWBT's indemnification language.

I look forward to receiving your response. Please feel free to call me if you have any questions regarding the above proposals.

Sincerely,


Sophie J. Keefer

cc: William B. Hammack
Magdalen B. Bickford, Esq.

0084627.01



William A. Brown
Senior Counsel

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April 1, 1999

Ms. Sophie J. Keefer
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20036-3384

RE: *YP-USA, Ltd. d/b/a The SunShine Pages v. Southwestern Bell Telephone Co.*
FCC File No. E-99-07

Dear Sophie:

This is in response to your letter dated March 29, 1999, concerning the above-referenced matter.

First, I note that you have already filed and served your client's voluntary dismissal of certain claims in this case. Southwestern Bell will file a response to that motion. Among other things, Southwestern Bell will not oppose dismissal of those claims. Southwestern Bell reserves the right to challenge other aspects of the motion and proposed order, however.

Second, I am advised that the system that generates the Subscriber List Information for the publishers, including Southwestern Bell Yellow Pages, cannot produce an update list of SLI for "new connects" alone. Given my present information, I must advise you that Southwestern Bell will not be able to satisfy that particular request. I have asked my client to develop an estimate of how much time and money would be involved in getting the new system to provide this information.

Third, while the present system cannot provide updates on either a weekly or bimonthly basis, I have been advised that the new system can provide them on a weekly basis. I also understand that the present start-up date for the new system is still June 1999. But, honestly, given our track record so far, that start-up date may slip again. Let me know if weekly updates will resolve your concerns.

Fourth, if your client can provide us with the NXX codes in question, I understand that my client is willing to provide you with a "snapshot" of the number of updates that occurred in February 1999 in the Kansas City area. This gracious, one-time offer



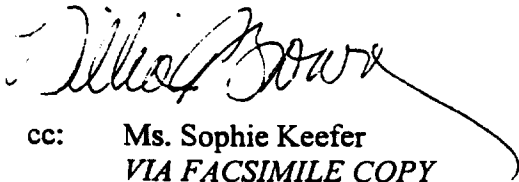
Ms. Sophie J. Keefer
April 1, 1999
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can be accomplished at no extra charge. I understand that this offer is made possible by the serendipitous convergence of events. I hope your client is able to take advantage of it.

Fifth, Mark and I have almost completed our discussions on the indemnity language. I hope to send you something by Friday, April 2. I apologize for the delay.

Wishing you a wonderful holiday weekend, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "William J. Brown". The signature is written in dark ink and is positioned above the typed name and contact information.

cc: Ms. Sophie Keefer
VIA FACSIMILE COPY
(202) 887-8979



William A. Brown
Senior Counsel

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April 2, 1999

Ms. Sophie J. Keefer
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1155 21st Street, N.W.
Washington, DC 20036-3384

RE: *YP-USA, Ltd. d/b/a The SunShine Pages v. Southwestern Bell Telephone Co.*
FCC File No. E-99-07

Dear Sophie:

This is in further response to your letter dated March 29, 1999, concerning the above-referenced matter.

After much effort, I have indemnity language to propose to you. I am enclosing the language Mark Farrell and I could agree on. Please let me know as soon as possible whether this is acceptable.

Because it's Good Friday, I will be taking a half day of vacation today and will be unavailable after noon Dallas time.

Sincerely,

A handwritten signature in cursive script, appearing to read "William A. Brown", with a long, sweeping underline that extends to the right.

Enclosure

cc: Ms. Sophie Keefer
VIA FACSIMILE COPY
(202) 887-8979

XIV. LIABILITY AND INDEMNIFICATION

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Notwithstanding any other provision of this Agreement, Licensee agrees to indemnify, save harmless, and defend Licensor from any and all actions, claims, demands, costs, damages, expenses, liabilities and losses, (including reasonable attorney fees) arising from Licensee's breach of this Agreement.

Licensor's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the fees paid by Licensee for the Subscriber Listing Information provided by Licensor. Under no circumstance shall Licensor be responsible or liable for indirect, incidental, or consequential damages (including, but not limited to, economic losses or lost profits or business opportunities) arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data.